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6 UNITED STATES BANKRUPTCY COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 In re:  
9 GIGA WATT, Inc., a Washington  
corporation,  
10 Debtor.

Case No. 18-03197-FPC  
The Honorable Frederick P. Corbit  
Chapter 7

11 **DECLARATION OF MARK D.**  
12 **WALDRON IN SUPPORT OF**  
13 **CHAPTER 7 TRUSTEE'S**  
**MOTION FOR ORDER**  
**APPROVING SETTLEMENTS**

14 I, Mark D. Waldron, in my capacity as the chapter 7 trustee ("Trustee") in  
15 the above-captioned bankruptcy case, pursuant to 28 U.S.C. § 1746 hereby declare  
16 as follows:

17 1. I am over 18 years of age, of sound mind, and otherwise competent  
18 to make this Declaration.

19 2. I am the Chapter 7 Trustee in the above-captioned bankruptcy case. I  
20 submit this declaration in support of the *Trustee's Motion for Order Approving*

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1 *Settlements* (“Motion”). Unless otherwise defined herein, capitalized terms have  
2 the meanings ascribed to them in the Memorandum filed in support of the Motion.

3 3. The statements made herein are based on my investigation of the  
4 Debtor’s affairs, my operation of the Debtor’s facilities, and my review of the  
5 Debtor’s books and records, including documents obtained from third parties.

6 4. By the Motion, I seek approval of a settlement which resolves four  
7 lawsuits and three appeals that are pending in three courts: this Court, the District  
8 Court and the Court of Appeals. The settlement will allow me to begin the claims  
9 resolution process, make distributions, and close the case. Administrative claims  
10 from the chapter 11 case are expected to be paid in full. After claims are resolved,  
11 I expect general unsecured creditors to receive a meaningful distribution.

12 5. The background to the parties’ dispute and the settlement terms are  
13 accurately described in the Memorandum filed in support of the Motion and while  
14 not repeated here are incorporated herein by reference.

15 6. In my business judgment, the settlement with Perkins is reasonable,  
16 fair and equitable. It puts to rest the Trustee’s action against Perkins and Mr.  
17 Usmanov (Adv. Proc. No. 20-80031), Perkins’ arbitration appeal before the Court  
18 of Appeals (Case No. 22-35104), Mr. Dam’s putative class action against Perkins  
19 in the District Court (Case No. 20-464), the Trustee’s injunctive relief adversary  
20 proceeding against Mr. Dam (Adv. Proc. No. 21-80053), Mr. Dam’s appeals of  
21 this Court’s orders staying and enjoining the Class Action pending in the District

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1 Court (Case No. 21-291), the RICO Action and Mr. Sofair's purported class claim  
2 in this case.

3 7. The Trustee Settlement will transfer \$3 million to the estate and the  
4 related Class Settlement will transfer \$4.5 million to WTT token holders, who are  
5 creditors in this case.

6 8. If damages were measured by the amount prematurely released and  
7 credit were given for funds transferred to Giga Watt from the IOLTA trust  
8 account, then the award of successful litigation would be \$10.8 million. This \$7.5  
9 million total settlement amount compares favorably to \$10.8 million, in my  
10 judgment.

11 9. Furthermore, Perkins disputes the construction schedule that my team  
12 and I have developed. It claims that our schedule should add 2.25MW for pre-  
13 existing facilities and 1.75MW for additional facilities built on a temporary basis  
14 in Ephrata, Washington and George, Washington. If Perkins were correct –  
15 although I believe Perkins is incorrect – the misappropriated amount would be  
16 reduced by approximately \$4 million, reducing the award of successful litigation  
17 to \$6.8 million, which is less than the settlement amount.

18 10. It could take five years before the estate recovers a judgment against  
19 Perkins. The future value of \$3 million in five years at the Prime Rate is \$4.5  
20 million. A judgment would range between \$6.8 and \$10.8 million, which means  
21 that the settlement amount is between 41% and 66% of a litigation reward.

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1 Including the \$4.5 million to WTT token holders, then the settlement amount is  
2 \$7.5 million. The future value of \$7.5 million in five years at the Prime Rate is  
3 \$11.3 million.

4 11. Regarding collectability, I believe that Perkins could satisfy a  
5 judgment based on its insurance policies and statements from Perkins' counsel. I  
6 do not believe that Mr. Usmanov could satisfy a judgment.

7 12. The litigation was complex, burdensome, and time-consuming as  
8 described in the Memorandum and as the Court is aware given its direct role in the  
9 litigation. The putative class action by Mr. Dam added to the complexity,  
10 inconvenience and delay of the litigation as described in the Memorandum. For  
11 example, after the appeals are resolved and this Court files its Report and  
12 Recommendation, no final judgment will likely be entered until after the District  
13 Court has also resolved Mr. Dam's class action against Perkins. In addition, both  
14 Perkins and Mr. Dam will appeal almost any adverse ruling.

15 13. The Supreme Court's recent decision in *Coinbase* promised further  
16 burden and delay. Indeed, the Court of Appeals asked for supplemental briefing  
17 regarding the effect of *Coinbase*, if any, on the issues on appeal.

18 14. Also, the litigation is expensive compared to the estate's resources.  
19 The estate has \$371,029.44 in unencumbered funds. Pursuant to this Court's  
20 *Order: (i) Approving the Sale of Moses Lake Equipment and Related Relief, etc.*,  
21 ECF No. 765, I am holding an additional \$112,000 in sales proceeds pending the

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1 assertion of claims by creditors to ownership of the property sold pursuant to that  
2 Order.

3 15. The estate has paid \$87,050 in attorneys' fees relating to the  
4 Preliminary Injunction and Mr. Dam's appeals of the Automatic and Preliminary  
5 Injunction Orders.<sup>1</sup> Perkins' appeals have cost the estate \$60,320 in attorneys'  
6 fees. There was no sign that the pace of litigation with Mr. Dam and/or appellate  
7 litigation would slow down. Instead, the pace was accelerating.

8 16. Before obtaining a terabyte of new information in August 2022, I  
9 estimated that discovery costs would total \$32,107. Since then, this estimate has  
10 doubled based on the scope of the new information.

11 17. If the litigation were to continue, the estate would incur an additional  
12 monthly fee of \$500 month per month to manage more than one terabyte of  
13 information that my team has gathered and produced to Perkins. Currently, the  
14 database is in hibernation at the cost of \$100 per month through October 2023. I  
15 intend to move to extend the hibernation period.

16 18. The estate paid \$9,600 to extract and process electronic information  
17 held by a third-party provider whom Giga Watt retained with respect to the SEC  
18 investigation of the ICO.

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21 <sup>1</sup> Trustee's counsel voluntarily waived fees relating to obtaining the Automatic  
22 Stay Order.

1           19. I estimate that the arbitration appeal could last another year, unless  
2 Perkins appeals to the Supreme Court in which case, it could take two years. The  
3 Court of Appeals has requested supplemental briefing in light of *Coinbase*. A host  
4 of issues will be addressed in that briefing, including whether the decision applies  
5 to bankruptcy proceedings and whether it applies under the specific facts here, i.e.,  
6 withholding of critical information. A remand could be necessary to develop a  
7 sufficient record regarding that withholding. Perkins has stated that it would  
8 appeal an adverse ruling to the U.S. Supreme Court.

9           20. Mr. Dam's appeals could last another six months in the District  
10 Court. Mr. Dam is expected to appeal the expected adverse ruling to the Court of  
11 Appeals, adding another year to those appeals alone.

12           21. Apart from the appeals, a trial in this Court will not end the litigation,  
13 because the District Court will all but certainly enter a final ruling only after  
14 considering Mr. Dam's claims against Perkins. Both Perkins and Mr. Dam will  
15 appeal an adverse judgment from the District Court.

16           22. I believe the settlement serves the paramount interests of creditors  
17 because it will allow them to receive a distribution from the estate. I expect to be  
18 able to pay all Chapter 7 and 11 administrative expenses in full, including Giga  
19 Watt's landlords who are collectively owed \$234,528.43 on a Chapter 11  
20 administrative basis. After the claims resolution process is completed, I expect to

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1 make a meaningful distribution to general unsecured creditors. Trade debt claims  
2 total approximately \$3.6 million.

3 23. In addition, the largest subset of the Debtor's creditors, WTT token  
4 holders, will receive \$4.5 million directly from Perkins.

5 24. The Sofair Stipulation will put to rest class action litigation alleging  
6 millions of dollars in damages against the estate in exchange for a general  
7 unsecured claim in the amount of \$16,977. It would cost more than the face  
8 amount of this claim to defend the RICO claims.

9 25. It is also reasonable, in my judgment, to dismiss the claims against  
10 Mr. Usmanov. Perkins has required a litigation bar in exchange for paying \$3  
11 million to the estate and \$4.5 million to WTT token holders. The claims against  
12 Mr. Usmanov are fact intensive. His ability to pay a judgment is highly  
13 questionable.

14 26. In conclusion, the settlement with Perkins will pay administrative  
15 claims and provide a meaningful distribution to creditors. The settlement amount  
16 compares favorably to the amount that the estate would reasonably expect to  
17 recover. The Class Settlement, on which the estate's settlement with Perkins is  
18 conditioned, puts \$4.5 million in the pockets of WTT token holders who are  
19 creditors in this case. Our case against Perkins is complex and burdensome,  
20 involving two sets of plaintiffs and multiple appeals. It will take years to reach a  
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1 final and nonappealable judgment, while administrative claimants and creditors  
2 wait, receiving nothing in the interim.

3 27. For all the foregoing reasons and as set forth in the Memorandum, I  
4 agreed to the settlement with Perkins, subject to this Court's approval.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed this 26<sup>th</sup> day of August 2023 in Tacoma, Washington.

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9 Mark D. Waldron  
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